

REMARKS

The present amendments and remarks are responsive to the Official Action having a mailing date of July 19, 2002. A petition for a three-month extension of time is enclosed. Claims 14-31 are pending. Claims 14-27, 29 and 30 are rejected. Claims 28 and 31 are objected to. Claim 14 is cancelled. New claim 32 is inserted. Entry of the foregoing and reexamination of the above-captioned application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, and in light of the remarks that follow, are respectfully requested.

The Examiner has requested that Applicants submit a proper Information Disclosure Statement in accordance with 37 C.F.R. § 1.98(b). Applicants respectfully submit that a proper Information Disclosure Statement, along with PTO form 1449, were submitted on March 12, 2001. Applicants respectfully request both an acknowledgement of receipt and confirmation that the documents recited therein were considered.

The Examiner has rejected claims 14, 15, 18-20 and 27 under 35 U.S.C. § 102(b) as allegedly being anticipated by United States Patent No. 4,366,384, issued to Jensen ("Jensen"). Applicants respectfully traverse.

Initially, the Examiner argues that the preamble of claim 14 should not be given patentable weight because the intended use of determining the presence of a fluid conduit does not result in a structural difference between the claimed invention and Jensen. While Applicants disagree that a preamble cannot be given patentable weight, the amendment renders the issue moot. Claim 14 has been cancelled and claim 32 has been added to address the Examiner's concerns. Specifically, the recitations from the preamble of claim 14 have been added to the body of new claim 32. Therefore, these recitations must be given "patentable weight."

The present invention is not anticipated by *Jensen* because *Jensen* does not teach the ability to determine the presence or absence of a fluid conduit located at a predetermined location as claimed. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)). *Jensen* does not meet this standard. *Jensen* fails to teach each of the elements of new claim 32, inter alia, the ability to determining the presence of a fluid conduit. *Jensen* only discloses a pair of light sensors and reflective sensors for detecting the presence of air bubbles in a fluid. Therefore, the Section 102 rejection must be withdrawn. As claims 15, 18-20 and 27 depend, either directly or indirectly, from new claim 32, they include each of its features in addition to other novel features. Thus, the Section 102 rejection must be withdrawn with respect to these claims as well.

All of the remaining rejections are based on obviousness under 35 U.S.C. § 103(a). The Examiner argues that that dependent claims 16, 17, 21-26 and 29-30 are unpatentable over *Jensen* in view of one of several secondary references. Applicants respectfully traverse. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP § 2143.01. Moreover, the combination must teach or suggest all of the claimed elements. See *Id.* "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art..."

*Id.* (emphasis added); see also *In re Vaeck* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As previously discussed, *Jensen* does not teach the detection a fluid conduit seated at a predetermined location. The Examiner has not identified where, if at all, there is a teaching or suggestion in any of the secondary references, whether explicitly or implicitly, to combine the teachings of these references with *Jensen*. Moreover, the Examiner has failed to identify any art recognized motivation, coupled with a reasonable expectation of success, which would lead one skilled in the art to combine any of these references. Finally, neither the primary reference nor the secondary references explicitly or implicitly teach or suggest the ability to determine the presence or absence of a fluid conduit seated at a predetermined location. Even if combinable, the secondary references do not supply what the primary reference is missing. Thus, the "all elements" rule is not satisfied. Because claims 15-31 directly or indirectly depend from new claim 32, they include each of its novel features. Therefore, it is respectfully submitted that claims 15-31 are allowable over *Jensen* in view of each of the secondary references. To be complete, Applicants briefly address each of these rejections.

The Examiner has rejected claims 16 and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Jensen* in view of U.S. Patent No. 5,928,179, issued to Plotkin ("*Plotkin*"). Applicant respectfully traverses. Claims 16 and 29 depend from claim 32, which is believed to be allowable for the reasons stated above.

The Examiner has rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over *Jensen* in view of U.S. Patent No. 5,319,182, issued to Havens, et al. ("*Havens*"). Applicant respectfully traverses. Claim 17 depends from claim 32, which is believed to be allowable for the reasons stated above.

The Examiner has rejected claims 21-24 under 35 U.S.C. § 103(a) as being unpatentable over *Jensen* in view of U.S. Patent No. 4,797,655, issued to Orndal, et al. ("*Orndal*"). Applicant respectfully traverses. Claims 21-24 depend from claim 32, which is believed to be allowable for the reasons stated above.

The Examiner has rejected claims 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over *Jensen* in view of *Orndal* and U.S. Patent No. 4,681,563, issued to Deckert, et al. ("*Deckert*"). Applicant respectfully traverses. Claims 25 and 26 depend from claim 32, which is believed to be allowable for the reasons stated above.

The Examiner has rejected claim 30 under 35 U.S.C. § 103(a) as being unpatentable over *Jensen* in view of U.S. Patent No. 4,884,065, issued to Crouse, et al. ("*Crouse*"). Applicant respectfully traverses. Claim 30 depends from claim 32, which is believed to be allowable for the reasons stated above.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 09/786,930

Docket No.: GAMBRO 3.3-250

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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